

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MAF, INC.,

Plaintiff,

v.

JOHN ISAAC, A/K/A JON ISAAC

Defendant.

Case No. 2:22-cv-1073-ART-VCF

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT (ECF NO. 26]

Plaintiff MAF, Inc. (“MAF”) brings this case alleging breach of contract and declaratory judgment under the Federal Declaratory Judgments Act against Defendant John Isaac (“Isaac”) for failure to fully pay Plaintiff per the terms of their contract. Before the Court is Plaintiff’s Motion for Summary Judgment (ECF No. 26) which is unopposed.

I. BACKGROUND

MAF seeks to recover the remaining portion of fees Isaac owes according to the parties’ contract. On November 22, 2019, parties executed a “Public Adjuster Contract” in which MAF agreed to assist Isaac with resolving his insurance claim for his property at 6855 Spyglass Lane in Rancho Sante Fe, CA. (ECF No. 26-3.) Isaac agreed to pay MAF a fee based on the amount MAF received from his insurance, specifically a 2.25% fee for what Isaac recovered between \$0 to \$10,000,000, 4% for what he recovered between \$10,000,000 to \$15,000,000 and 6% for any amount recovered above \$15,000,000. (*Id.* at 3.) On July 27, 2021, the parties amended the contract to require MAF to share the cost of third-party consultants hired by Isaac if MAF used any of their work. (ECF No. 26-4 at 2-3.)

1 According to the insurance company, they never used any of the third-party
2 consultants' work in resolving the claim. (ECF No. 26-10 at ¶ 5.)

3 Isaac's insurer paid him \$26,500,000, (ECF No. 26-2 at ¶ 1), so MAF was
4 entitled to a fee of \$1,115,000. (See ECF No. 26-3 at 2.) The insurer paid Isaac in
5 three installments; Isaac was supposed to pay MAF \$690,000 from the final
6 payment. (ECF No. 26-5.) While Isaac paid MAF the amount due from the first
7 two installments, he never paid MAF the \$690,000 owed on the final installment.
8 (ECF No. 26-1 at ¶ 21.) The insurer had made a check out to both Isaac and MAF
9 for \$11.5 million. (ECF No. 26-6.) Isaac and Michael A. Fusco ("Fusco"), Founder
10 and CEO of MAF, agreed that MAF would deposit the check into Isaac's account
11 with Bank of America and then Isaac would pay MAF by check for the \$690,000
12 he owed. (ECF No. 26-7 at 3-4.)

13 MAF alleges that it has not received the required payment. Isaac wrote a check
14 dated May 23, 2022, to Plaintiff for \$690,000 and shipped it overnight to Fusco.
15 (*Id.* at 4; ECF No. 26-8.) MAF deposited the \$11.5 million check from the insurer
16 into Isaac's Bank of America account on May 27, 2022, which cleared on May 31,
17 2022. (ECF No. 26-9 at 2-3.) On May 31, 2022, MAF brought Isaac's check to his
18 bank, and Jenny Marek, Vice President of Bank of America, strongly advised MAF
19 not to deposit the check and implied there were insufficient funds in the account.
20 (ECF No. 26-2 at ¶ 21.) Fusco contacted Isaac who told Fusco that he had put a
21 stop payment on the check. (*Id.*) To date, Isaac has not paid the remaining
22 \$690,000. (*Id.*)

23 MAF filed the instant action on July 6, 2022, asserting breach of contract and
24 declaratory judgment claims against Isaac. (ECF No. 1.) Isaac filed his Original
25 Answer and Counterclaim on September 12, 2022 (ECF No. 18.) MAF amended
26 its complaint on October 3, 2022. (ECF No. 19.) Isaac filed an Amended Answer
27 and Counterclaim on October 17, 2022. (ECF No. 24.) In the motion, Isaac asserts
28 six claims of relief: 1) breach of contract; 2) breach of the implied covenant of

1 good faith and fair dealing; 3) fraudulent misrepresentation; 4) negligent
 2 misrepresentation; and 5) intentional interference with contractual relations; and
 3 6) unjust enrichment. (*Id.* at 17-25.) On February 22, 2023, MAF filed a Motion
 4 for Summary Judgment. (ECF No. 26.) Despite the Court granting multiple
 5 stipulations for extensions of time to respond to the Motion for Summary
 6 Judgment (ECF Nos. 32, 38, 43, 47, 51), Isaac never filed any opposition to MAF's
 7 Motion for Summary Judgment.

8 **II. LEGAL STANDARD**

9 "The purpose of summary judgment is to avoid unnecessary trials when there
 10 is no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't*
 11 *of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate
 12 when the pleadings, the discovery and disclosure materials on file, and any
 13 affidavits "show there is no genuine issue as to any material fact and that the
 14 movant is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477
 15 U.S. 317, 322 (1986). An issue is "genuine" if there is a sufficient evidentiary
 16 basis on which a reasonable fact-finder could find for the nonmoving party and
 17 a dispute is "material" if it could affect the outcome of the suit under the
 18 governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). The
 19 court must view the facts in the light most favorable to the non-moving party and
 20 give it the benefit of all reasonable inferences to be drawn from those facts.
 21 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

22 The party seeking summary judgment bears the initial burden of informing
 23 the court of the basis for its motion and identifying those portions of the record
 24 that demonstrate the absence of a genuine issue of material fact. *Celotex*, 477
 25 U.S. at 323. Once the moving party satisfies Rule 56's requirements, the burden
 26 shifts to the non-moving party to "set forth specific facts showing that there is a
 27 genuine issue for trial." *Anderson*, 477 U.S. at 256. The nonmoving party "may
 28 not rely on denials in the pleadings but must produce specific evidence, through

1 affidavits or admissible discovery material, to show that the dispute exists[.]”
 2 *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991).

3 **III. DISCUSSION**

4 a. Breach of Contract Claim

5 Plaintiff is entitled to summary judgment on its breach of contract claim.
 6 To succeed on a breach of contract claim, the plaintiff must show “(1) the
 7 existence of a valid contract, (2) a breach by the defendant, and (3) damage as a
 8 result of the breach.” *Saini v. Int’l Game Tech.*, 434 F.Supp.2d 913, 919-920 (D.
 9 Nev. 2006) (citing *Richardson v. Jones*, 1 Nev. 405, 405 (Nev. 1865)).

10 The parties executed a valid contract. “Basic contract principles require,
 11 for an enforceable contract, an offer and acceptance, meeting of the minds, and
 12 consideration.” *May v. Anderson*, 119 P.3d 1254, 1257 (Nev. 2005). Parties agreed
 13 to a written contract meeting all of these elements. In the contract between the
 14 parties, MAF agreed to assist Isaac with his insurance claim in return for
 15 payment based on the written fee arrangement. (ECF No. 26-3). No evidence
 16 suggests that this contract lacked any of the required elements for contract
 17 formation. In fact, Isaac agrees that he and MAF had a valid contract. (ECF No.
 18 24 at 17.)

19 Isaac breached the contract, resulting in damages for MAF. MAF had
 20 fulfilled its portion of the contract by assisting Isaac in making his insurance
 21 claim, including analyzing his insurance policy, building estimates, and
 22 attending meetings with Isaac’s insurer. (ECF Nos. 26-2 at ¶¶ 9-13; 26-3 at 2.)
 23 As a result of MAF’s work, Isaac received \$26.5 million from his insurer. (ECF No.
 24 26-2 at ¶ 12.) Isaac put a stop payment on the \$690,000 check he wrote to MAF
 25 and has not paid the \$690,000 owed under the contract. (*Id.* at ¶ 21.) Thus, Isaac
 26 breached the contract by not fully paying MAF for its services, and MAF was
 27 damaged in the amount of \$690,000 it is owed under the contract.

28 Isaac is not entitled to a reduction in the amount he owes MAF based on

1 the amendment to the contract. On July 27, 2021, the parties amended the
2 contract to require MAF to share the cost of third-party consultants hired by Isaac
3 if MAF used any of their work. (ECF No. 26-4 at 2-3.) However, MAF, citing to
4 testimony from the insurer's adjuster, asserts that it never utilized any of the
5 third-party consultants' work (ECF No. 26-10 at ¶ 5), and Isaac provides no
6 evidence to contradict this point. In fact, the adjuster claimed that the third-party
7 vendors' work was neither useful nor reliable. (*Id.*) The Court finds that MAF was
8 not responsible for sharing the costs of the third-party vendors based on the
9 contract amendment.

10 b. Declaratory Judgment Claim

11 In addition to its breach of contract claim, MAF argues it is entitled to
12 declaratory judgment. Specifically, MAF asks the Court to find as a matter of law
13 that 1) the contract is enforceable, 2) MAF is entitled to \$690,000 under the
14 contract; and 3) Isaac is not entitled to any reduction of the \$690,000 pursuant
15 to the July 2021 amendment to the contract. Because the Court has already
16 resolved these issues in its discussion of the breach of contract claim, the
17 declaratory judgment claim is redundant, and the Court will dismiss the claim.
18 *See Clifford v. Geico Cas. Co.*, 428 F.Supp.3d 317, 326 (D. Nev. 2019) (citing *U.S.*
19 *v. State of Wash.*, 759 F.2d 1353, 1357 (9th Cir. 1985) (en banc)).

20 c. Isaac's Affirmative Defenses and Counterclaims

21 The Court finds that Isaac's affirmative defenses and counterclaims are
22 without merit. Isaac raises a variety of affirmative defenses in his answer. Isaac
23 also brings the following counterclaims: 1) breach of contract; 2) breach of the
24 implied covenant of good faith and fair dealing; 3) fraudulent misrepresentation;
25 4) negligent misrepresentation; 5) intentional interference with contractual
26 relations; and 6) unjust enrichment. Because Isaac failed to meet his burden for
27 his affirmative defenses and counterclaims and there are no genuine issues of
28 material fact, the Court will grant summary judgment on all of these claims in

1 favor of MAF.

2 i. Affirmative Defenses

3 In his Answer to MAF's Complaint (ECF No. 24 at 7-8), Isaac raises a variety
4 of affirmative defenses. Because the Answer provides no factual basis for these
5 affirmative defenses, and Isaac failed to file any responsive motions to expand
6 upon these affirmative defenses, the Court concludes that none of these
7 affirmative defenses prevent judgment in MAF's favor.

8 ii. Breach of Contract

9 The Court is unpersuaded by Isaac's breach of contract counterclaim. Isaac
10 alleges that MAF breached the contract by not sharing the costs of Isaac's third-
11 party consultants and failing to complete all of the duties outlined in their
12 contract. (ECF No. 24 at 17-18.) The facts of this case contradict such a claim.
13 With regards to sharing the costs of the third-party consultants, the Court has
14 already found that MAF was not obligated to share the costs because neither MAF
15 nor the insurer relied on their work, which was a condition precedent for MAF
16 having to pay for the services. (ECF Nos. 26-4 at 2-3; 26-10 at ¶ 5.) The other
17 bases for the breach of contract also fail because Isaac never provides any
18 evidence that MAF did not fully perform under the contract, and MAF asserts
19 that it fully performed, resulting in Isaac recovering \$26,500,000. (ECF No. 26-2
20 at ¶¶ 9-13.) Thus, the Court will grant MAF summary judgment on this claim.

21 iii. Breach of the Implied Covenant of Good Faith and Fair Dealing

22 Isaac similarly fails to prove his claim that MAF breached the implied covenant
23 of good faith and fair dealing. Isaac alleges MAF breached the implied covenant
24 of good faith and fair dealing by not exercising reasonable care and oversight in
25 performing its duties resulting in Isaac having to rely on the third-party
26 consultants in resolving the insurance claim and also not admitting it was
27 required to share the costs of Isaac's third-party consultants. (ECF No. 24 at 18-
28 20.) As previously discussed, the insurer's adjuster stated that they did not rely

1 on any of the third-party consultants' work, so MAF had no duty to help Isaac
2 pay for their work. (ECF No. 26-10 at ¶ 5.) Similarly, the Court has no facts before
3 it suggesting that MAF did not exercise reasonable care and oversight in its work,
4 so there is no genuine issue of material fact preventing the Court from granting
5 summary judgment on this claim.

6 iv. Fraudulent and Negligent Misrepresentation

7 Isaac's claims of fraudulent and negligent misrepresentation lack any merit.
8 Isaac alleges that Fusco fraudulently misrepresented "MAF's experience and
9 expertise in handling complex residential claims" like the one Isaac hired them
10 to help resolve. (ECF No. 24 at 20-21.) The only example Isaac presents is that
11 "Fusco, on behalf of MAF, made false representations that MAF would share in
12 the costs of the third-party experts, consultants and professionals incurred by
13 Isaac for the benefit of the insurance claims." (*Id.* at 20.) Isaac fails to point to
14 any examples of MAF fraudulently representing its capabilities, and the Court
15 has already explained that MAF was only obligated to help pay for the third-party
16 consultants if they used their work, which never happened. Similarly, while Isaac
17 claims that MAF made negligent representations, he never gives examples of such
18 representations. Thus, Isaac fails to meet the pleading requirements established
19 by FRCP 9. *See* FED. R. CIV. PRO. 9(b) ("In alleging fraud or mistake, a party must
20 state with particularity the circumstances constituting fraud or mistake.") The
21 Court will grant summary judgment in favor of MAF for this claim.

22 v. Intentional Interference with Contractual Relations

23 Isaac's allegation that MAF interfered with his contracts with the third-
24 party contractors lacks any evidentiary support. Isaac states that MAF
25 intentionally made inaccurate statements to the third-party consultants to harm
26 or otherwise interfere with Isaac's contracts with the consultants. (ECF No. 26 at
27 23-24.) Isaac provides no facts to justify this allegation. The Court is unclear what
28 inaccurate statements Isaac claims MAF allegedly made, and what supposed

1 harm Isaac faced, so the Court will grant summary judgment in favor of MAF.

2 vi. Unjust Enrichment

3 Lastly, Isaac alleges that MAF was unjustly enriched by Isaac hiring the third-
4 party consultants to do work MAF was supposed to have completed, not having
5 to do the full work MAF was hired to do and receiving a higher fee by virtue of the
6 third-party consultants' work. (ECF No. 26 at 24-25.) The Court will grant
7 summary judgment in favor of MAF because neither MAF nor the insurer used
8 the third-party contractors' work in resolving the claim (ECF No. 26-10 at ¶ 5),
9 and Isaac fails to provide any evidence that MAF did not fully perform and earn
10 its fee. Instead of being unjustly enriched, MAF was underpaid for its services,
11 necessitating the current lawsuit.

12 **IV. CONCLUSION**

13 It is therefore ordered that MAF's Motion for Summary Judgment (ECF No. 26)
14 is granted in part and denied in part. The Court finds in favor of MAF's breach of
15 contract claim but denies MAF's declaratory relief claim for being duplicative. The
16 Court also finds in favor of MAF with regards to all of Isaac's counterclaims.

17 It is further ordered that MAF is entitled to a judgment in the amount of
18 \$690,000.

19 The Clerk of Court is directed to enter judgment accordingly and close the
20 case.

21
22
23 DATED THIS 29th day of March 2024.

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25 

26
27 ANNE R. TRAUM
28 UNITED STATES DISTRICT JUDGE